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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 78 OF 2003

Laxman Devendrappa Biradar ... Appellant

V/s

The State of Maharashtra. ... Respondent

Mr. C.K. Pendse for the appellant.

Mrs. S.D. Shinde, A.P.P. for the respondent State.

CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED: 7TH DECEMBER, 2006.

ORAL JUDGMENT (PER SMT. NISHITA MHATRE, J.):

1. The accused has been convicted and sentenced under Section 302 of the Indian Penal code for murdering his sister-in-law. He has been acquitted of the offence punishable under Section 177 of the Indian Penal Code. The accused impugns this judgment of the Ad-hoc Additional Sessions Judge, Pune, in the present appeal.

2. Briefly stated the case of the prosecution is that, the accused and his wife Malamma were working as labourers with a construction company. Sakhubai, Malamma's sister, came to reside with them as her

husband had died, two years prior to the incident. However, Sakhubai did not have any means to support herself and her child. She did not join the accused and his wife at work. According to the prosecution, the accused did not approve of the fact that his sister-in-law and her son were residing with them without any source of income. The accused, therefore, murdered Sakhubai during the night between 2nd and 3rd of March, 2002. He informed the police wrongly that she had died of a heart-attack. It was only after the body of the victim was sent for post-mortem examination that ligature marks were noticed around the neck of the victim. Thereafter the police investigated the matter and the accused was arrested on 4.3.2002 and tried for having murdered Sakhubai. In these circumstances, the accused was convicted and sentenced by the Ad-hoc Additional Sessions Judge, Pune.

3. The evidence led by the prosecution is in the nature of circumstantial evidence. The main circumstances relied on by the prosecution are that, (i) the victim was living with the accused and his wife without any source of livelihood; (ii) that the accused had given false information to the police that the victim died of a heart-attack; (iii) the medical evidence indicated that the victim died of a strangulation and; (iv) that

a rope which was used for committing the offence was recovered at the instance of the accused.

4. The wife of accused has been examined as PW-1. She is the sister of victim. She has stated that there were two rooms in her house, one of which was occupied by her sister and her child and the other by herself and the accused. She states that on 3.3.2002 when she woke up in the morning, she found her sister was dead. The accused informed the police that she has died of a heart-attack at night. This witness has been declared hostile. She has denied that the accused was annoyed because the victim had no work in order to contribute to the family income. In the cross-examination, she has stated that she saw one piece of rope near the door of the room where her sister was sleeping and the other piece tied to the door. She has admitted that her sister was mentally affected after her husband's death and that she had attempted to commit suicide three times earlier. She has spoken of two such attempts having been made in her house while the third attempt was at her father's residence.

5. The next witness who has been examined is the A.P.I. who has spoken about the recovery of a rope at the instance of the accused. This witness states

that he took over the investigation of the crime on 4.3.2002 by which time the panchanama of the scene of offence was already drawn. He has conceded that the rope which was seized was easily available in the open market.

6. The doctor who conducted the post-mortem examination has been examined as PW-3. He has described the injuries sustained by the victim including the ligature marks on her neck. He has opined that the probable cause of death was asphyxia due to strangulation. He has stated that the death occurred about six hours after the last meal of the victim.

7. PW-4 is the panch witness who has spoken about the recovery of the rope at the instance of the accused. According to this witness, the accused led the police inside the premises of the Company in which he was working. He entered a tin shed consisting of three rooms and took out the rope from a gap between two tins in the shed. This rope was sent for analysis to the chemical analyzer. However, there is no proof that it was used for strangulating the victim or that the accused had used the rope.

8. PW-5 is the investigating officer who initially

recorded an accidental death on the information given by the accused. He has drawn up the spot panchanama which is at Exh.10 and the inquest panchanama which is at Exh.11. He has proved these two documents. The spot panchnama indicates that the tin shed had a tin door which was required to be tied with a rope. The victim was lying on the ground.

9. Considering the evidence on record, the prosecution has failed to prove that the death of the victim was homicidal and it was not a case of suicide. The victim's sister has categorically stated that on three earlier occasions the victim had tried to commit suicide. The last two occasions were in her house. She has also stated that the victim was mentally disturbed after her husband's death. The post-mortem report indicates that the ligature mark was not visible on posterior part of the neck of the deceased. There are no external injuries on the body which would have been apparent if the accused had throttled the victim and she had shown some resistance. There is no positive evidence on record to indicate that the death was homicidal and the victim had not committed suicide. The possibility, therefore, of a suicide cannot be ruled out.

10. Even assuming that the death of the victim was homicidal, there is no evidence on record to connect the accused with the death of the victim. The victim was staying with the accused and his wife PW-1. When they retired for the night, both the accused and PW-1 were present in the house alongwith the victim. There is no reason given by the prosecution as to why the accused would kill his sister-in-law. The only motive, according to the prosecution is that, the victim had no source of income and, therefore, could have been a burden on the accused. PW-1 has denied this fact. In the event she was a burden, the victim would have been a burden on both, the accused as well as PW-1. Therefore, in no way that the accused can be connected to the crime. The other reason for connecting the accused to the crime is alleged by the prosecution is that, the rope allegedly used to strangulate the victim was recovered at the instance of the accused. If the theory of suicide is accepted as stated by PW-1, the accused was frightened when he saw the dead body of his siter-in-law. In all probability, he could have hidden the rope not wanting any problems for himself and his wife on account of his sister-in-law having committed suicide. It was probably for this reason that he deposed about the accidental death. If the theory that the victim’s death was homicidal is to be accepted, then

both PW-1 and the accused had equal opportunity to commit the crime. Moreover, there is evidence on record to indicate that the door of the room could easily be opened as it used to be tied with the rope. The spot panchanama shows that two cut pieces of rope, one tied to the door and another near the door were found at the scene. There is no evidence on record as to who had cut the rope and entered the room where Sakhubai was sleeping.

11. In such circumstances, the accused is entitled to the benefit of doubt and the judgment and order of the Sessions Court will have to be set aside.

12. The appeal is thus allowed. The conviction and sentence passed by the Sessions Court is set aside. The accused be set at liberty forthwith, if not otherwise required.

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